

Exhibit 1: Reinstatement Order

IN THE CIRCUIT COURT
FOR THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED

JUL 02 1999

CLERK OF CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

DONNA CRAIN, et al.,

Plaintiffs,

vs.

Case No. 96 LM 983

LUCENT TECHNOLOGIES, INC.,

et al.,

Defendants.

ORDER

I.

On April 8, 1999, the Court received the Plaintiffs' Motion For Reconsideration Of the Court's March 10, 1999, Order. By that order the Court allowed the Defendants' Motion For Judgment on the Pleadings, or, Alternatively, to Dismiss or Stay pursuant to 735 ILCS 5/2-615(e). An order was entered April 9 establishing a briefing schedule and setting the Motion for Reconsideration for hearing on May 25, 1999. On May 24, 1999, the Court received the Motion of the Federal Communications Commission for Leave to Participate as Amicus Curiae and a Memorandum of Federal Communications Commission as Amicus Curiae. At the hearing on May 25 the defendants objected to the FCC's motion and the Court's consideration of same. The Court proceeded to hear the merits of the plaintiffs' Motion for Reconsideration and allowed the parties to submit memoranda on the propriety of the FCC's proposed amicus curiae participation as well as the content of the FCC's memorandum. The defendants on May 24, 1999, filed a motion before the FCC seeking a declaratory ruling on the preemption issue but this Court is not aware of when, if at all, the FCC might exercise its discretion and act on the motion. This Court has therefore proceeded to consider all of the memoranda and other matters properly before the Court and, being fully advised in the premises, finds as follows.

The case law is not extensive on the issue of whether it is appropriate for amicus to participate in the trial court. However, the cases that have now been cited to the Court are sufficient to establish that the Court has discretion to permit amicus to participate in limited circumstances. Although the FCC's motion seeking leave to participate would have more appropriately been filed prior to the time that the Court established a briefing schedule on the merits of the plaintiffs' motion, the Court has now allowed the parties time to respond to the FCC's memorandum. Any prejudice that could inure to either party by the FCC's late entry into this matter has been eliminated. The FCC has expressed no

view on the merits of the claims made in plaintiffs' lawsuit. The Court in its discretion does hereby allow the Motion of the Federal Communications Commission for Leave to Participate as Amicus Curiae and does take notice of the FCC's asserted position on the preemption issue.

In the course of briefing the issues pursuant to the plaintiffs' Motion for Reconsideration the parties have given the Court a much more expansive overview of the law concerning preemption than had previously been submitted. It is clear that courts should be very reluctant to find preemption. It is also clear that there has been no express preemption in this case, nor preemption because of impossibility in complying with both state and federal regulations. There is no case directly on point, dealing with customer premises equipment, that compels this Court to find that the plaintiffs' claims are preempted as a matter of law on any theory. The Court is mindful of the presumption against preemption and the FCC has now submitted that there was no intention to preempt claims such as those being made by the plaintiffs. In view of all of those factors the Court now concludes that all of plaintiffs' claims can be pursued without being an obstacle to the FCC's goal of a competitive market. The Court therefore rules that the plaintiffs' claims are not preempted.

Defendants have also reasserted their argument that the plaintiffs' claims are barred by the voluntary payment doctrine. The defendants argued in their original motion that the plaintiffs' action should be stayed or dismissed under the doctrine of primary jurisdiction. The Court now finds that the plaintiffs' claims are not barred as a matter of law by the voluntary payment doctrine and that the action should not be stayed under the doctrine of primary jurisdiction.

At the time the plaintiffs filed their motion seeking reconsideration they asked in the alternative that the Court refer the preemption issue to the FCC for resolution. As noted above, on May 25, 1999, the FCC filed a memorandum in this court stating that it was not the intention of the FCC to preempt claims such as those being asserted by the plaintiffs. As also noted above, the defendants have now sought a formal declaratory ruling from the FCC on the preemption issue. The plaintiffs' opposition to that petition indicates to the Court that plaintiffs no longer seek the alternative relief. The parties have not advised this Court of the likelihood that the FCC will entertain the defendants' motion and, if so, when it might make a ruling. It is possible that the FCC would give a different opinion in a formal declaratory ruling than was stated in its Memorandum in this court, but that is entirely speculative. More certain is that referring the matter to the FCC at this point would only cause further delay. If the FCC proceeds to act on defendants' motion and rules contrary to what it has already stated, this Court can act as may be appropriate.

Wherefore, the Plaintiffs' Motion for Reconsideration of the Court's March 10, 1999, Order is hereby allowed and said order is hereby vacated and held for naught. The Defendants' Motion for Judgment on the Pleadings, or, Alternatively, to Dismiss or Stay is now denied.

II.

Taken under advisement after the hearing on January 28, 1999, were the Defendants' Motion to Dismiss or, Alternatively, to Stay which sought relief pursuant to 735 ILCS 5/2-619(a)(3) and Plaintiff's Motion for Class Certification. Those motions were rendered moot by the Court's order of March 10, 1999, which has now been vacated.

Having proceeded to consider the merits of the Defendants' Motion to Dismiss or, Alternatively, to Stay, that motion is hereby denied.

III.

Before ruling on the merits of Plaintiff's Motion for Class Certification, the Court must address two preliminary matters.

First, on January 28 plaintiff filed the Plaintiffs' Motion to Amend by Interlineation the Class Definition as Given in Their Second Amended Class Action Complaint and Plaintiffs' Motion for Class Certification. That motion is hereby allowed. (See separate order.)

On February 5, 1999, plaintiff Donna Crain filed Plaintiff Donna Crain's Motion to Voluntarily Dismiss Without Prejudice Her Individual Claims Against Defendants and to Withdraw as a Proposed Class Representative. That motion is hereby allowed. (See separate order.)

The Court has proceeded to consider the matters properly before the Court dealing with the Plaintiff's Motion for Class Certification and that motion is hereby granted. It is hereby ordered that the law firm of Carr, Korein, Tillery, Kunin, Montroy, Cates & Glass is appointed as Class Counsel for the following certified class:

All persons who are or have been residents or citizens of the State of Illinois who have paid Defendants rental or lease charge for residential telephone equipment at any time after January 1, 1986.

Excluded from the class are: (1) Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as other officers, directors, agents, servants, or employees of Defendants, and the immediate family members of any such persons. Also excluded is any trial judge that may preside over this Cause.

The Court hereby finds that the requirements of Rule 5/2-801 are met as to this class in that:

- a. The Class is so numerous that joinder of all members is impracticable, in that the Class consists of several thousand residential subscribers of Defendants in Illinois;
- b. There are questions of fact and law common to the Class, which common questions predominate over any questions affecting only individual members;
- c. The Plaintiff will fairly and adequately protect the interest of the Class, in that the representative plaintiff for this class is firmly committed to the prosecution of this action and his counsel possess ample experience to diligently prosecute this case to its conclusion; and
- d. A class action is an appropriate method for the fair and efficient adjudication of this controversy, in that the potential recovery for any individual Class member is too small for there to be a realistic expectation of separate suits being brought and the entire Class' interest will be protected through the representative party.

Clerk to send copies of this Order to the attorneys of record.

DATE: ~~June 30~~^{JUL 3}, 1999

FILED

JUL 02 1999

P. J. O'Neill
CLERK OF CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
P. J. O'Neill
Circuit Judge
MADISON COUNTY, ILLINOIS